on March 6, after the premises were first closed against the respondents; and (2) because there was some evidence that the tenancy of the restaurant company had been determined and so, it was submitted, it did not have possession of the premises.

Their Lordships are satisfied that there is no substance in these further submissions. The order is perfectly clear in protecting the respondents' quiet enjoyment of the night club premises. It was breached by the continuing exclusion of the respondents from the premises. Their Lordships add that if, contrary to their conclusion on this branch of the case, the state of the premises were a relevant subject for inquiry, the appellant would have had to overcome the findings of fact in the Malaysian courts that the respondents had used the premises as a night club on March 14 and 15 before they were again dispossessed and that the night club could have been carried on thereafter by the respondents if they had not been excluded. And the trial judge also found as a fact that at the material time the restaurant company was still the tenant of the premises – a matter which had never been in dispute until after the order of March 14 was made.

The remaining question relates to the sentence imposed on the appellant. The memorandum of appeal to the Federal Court did not challenge the quantum of the fine imposed in the High Court and the Federal Court itself increased the fine without notice to the appellant and so without giving him any opportunity to be heard. In these circumstances the increased fine cannot stand.

Their Lordships will accordingly advise His Majesty the Yang di-Pertuan Agong that the appeal should be dismissed except as to the amount of the penalty and in that regard the order made in the High Court should be restored. The appellant must pay the costs of the appeal to their Lordships' Board.

Appeal dismissed.

Solicitors: *Masons ; Herbert Smith.*

A SINGAPORE REPORTS

CHIAM AH KHIAM & ORS. v. LEONG AH TOON & ORS.

[O.C.J. (Thean J.) August 8, 1986]

B [Singapore – Originating Summons No. 1137 of 1984]

Land Law – Tenancy in common – Whether determined by any partition – Whether award of Collector should be apportioned among the different owners.

Land Acquisition – Whether award of Collector should C *be apportioned – Tenancy in common – Whether determined by partition.*

Four farmers, Chiam Ah Khiam, the first plaintiff, and three others, Ng Ah Meng, Neo Heer Bok and Ng Chua, combined their resources to purchase a large piece of land situated at Sembawang ("the said land") for farming. A D part of the said land was comprised in an Agricultural Lease for a term of 99 years commencing from December 2, 1878 ("the leasehold land") and the remaining part in a Statutory Land Grant for an estate forever ("the freehold land"). According to a private survey done at the request of the four farmers, the leasehold land was divided into two plots, 1 and 2 and the freehold land was divided into two plots, 3 and 4. The boundaries of these 4 lots were drawn and E demarcated by the surveyor. After the survey and subdivision the 4 farmers drew lots to determine who was to be allocated which plot and as a result of such drawing of lots, the first plaintiff was allocated plot 1, Ng Ah Meng plot 2, Neo Heer Bok plot 3 and Ng Chua plot 4. They then entered into an agreement dated February 22, 1955 ("the Agreement") under which they each took "in severalty" the F respective plots of land allocated to them.

By an Indenture dated May 25, 1955 ("the Principal Indenture") the freehold and leasehold estates in the land were conveyed and assigned to them as tenants in common in undivided equal shares. The purchase price was paid by the four of them in equal proportions. Apart from the G Agreement no deed of partition of their tenancy in common was made at the time of the Principal Indenture or subsequently. Since completion of the purchase of the said land, three of the original purchasers, Ng Ah Meng, Ng Chua and Neo Heer Bok had transferred their respective undivided shares in the said land to divers parties *i.e.* 2nd, 3rd and 4th plaintiffs and 1st, 2nd, 3rd, 4th, 5th, 6th, 7th and 8th H defendants. The 1st defendant conveyed part of his interest to the 9th defendant. Therefore as at January 21, 1974 being the date of the last transaction the freehold and leasehold estates in the said land were vested in the various parties as tenants in common in different undivided shares.

On January 3, 1984, a declaration was made under section 5 of the Land Acquisition Act for the acquisition of I the freehold land and notice thereof was given to each of the parties namely the plaintiffs and the first nine defendants. Pursuant to the Land Acquisition Act, the Collector of Land Revenue, the 10th defendant, on October 8, 1984 awarded $872,700.00 as compensation for the acquisition of the freehold land and apportioned this sum amongst the first nine defendants to the exclusion of the plaintiffs. Thereupon the plaintiffs took out this originating

summons.They claimed that at all material times they held the said land and in particular the freehold land as tenants in common with the first nine defendants and consequently were entitled to share in the award made by the 10th defendant, the Collector of Land Revenue. The first nine defendants contended, however, that the tenancy in common in which the original purchasers held the said land had been determined by a partition made between them and that they, the first nine defendants as successors in title to two of the original purchasers took plots 3 and 4 of the said land, being the freehold land, in severalty.

Held: at all material times the plaintiffs and the first nine defendants held the said land as tenants in common in undivided shares and that the tenancy in common had not been determined. The plaintiffs and the first nine defendants were at the date of the award owners of the said land as tenants in common in undivided shares. Accordingly the award made by the 10th defendant should be amended and the award apportioned.

ORIGINATING SUMMONS.

Ho Yong Min for the plaintiffs.

Tan Hoay Djin for the first nine defendants.

Miss Jocelyn Ong (*Miss Bala* with her) for the 10th defendant.

Cur. Adv. Vult.

Thean J. : Slightly more than 31 years ago, four farmers: Chiam Ah Khiam, the 1st plaintiff, and three others, Ng Ah Meng, Neo Heer Bok and Ng Chua, combined their resources to purchase a large piece of land situate at Sembawang containing an area of 43 acres 3 roods and 19 poles and marked as Lot 125-2 of Mukim XIII ("the said Land") for farming. Unfortunately, a part of the said Land was comprised in an Agricultural Lease No. 818 for a term of 99 years commencing from December 2, 1878 ("the leasehold land") and the remaining part in a Statutory Land Grant No. 11455 dated July 2, 1900 for an estate forever ("the Freehold Land"). Having negotiated or in the course of negotiating the purchase of the said land, they engaged a surveyor, A. Kandiah, to survey the said land and divide it into four sub-divided lots: the leasehold land was divided into two plots, plot 1 and plot 2, and the freehold land into two plots, plot 3 and plot 4. According to this private survey the areas of these four plots are approximately as follows:

(i) 10 acres 3 roods 23 poles for plot 1;
(ii) 10 acres 3 roods 22 poles for plot 2;
(iii) 11 acres 0 roods 07 poles for plot 3; and
(iv) 11 acres 0 roods 07 poles for plot 4.

The boundaries of these four plots were drawn and demarcated by the surveyor. After the survey and subdivision the four farmers drew lots to determine who was to be allocated which plot, and as a result of such drawing of lots, the 1st plaintiff was allocated plot 1, Ng Ah Meng plot 2, Neo Heer Bok plot 3 and Ng Chua plot 4. They then entered into an Agreement dated February 22, 1955 ("the Agreement") under which they each took "in severalty" the respective plots of land allocated to them. The material provisions are clauses 1 and 3 which are in the following terms:

> "1. The said Ng Chua shall take in severalty the property described in the first schedule hereto [plot 4] the said Chiam Ah Khiam shall take in severalty the property described in the second schedule hereto [plot 1] the said Ng Ah Meng shall take in severalty the property described in the third schedule hereto [plot 2] and the said Neo Heer Bok shall take in severalty the property described in the fourth schedule hereto [plot 3].
>
> 2. ....
>
> 3. On the signing of this agreement each shall be let into possession or receipt of the rents of the property so agreed to be taken as aforesaid in severalty by him and on that date in future to be agreed by the parties the several parties hereto and all other necessary parties (if any) shall respectively do and execute all assurances and acts necessary or proper for carrying the said partition into effect and any question as to the form and contents of the assurances or of the acts to be done shall be determined and settled in case of difference by a solicitor to be nominated by the parties hereto."

No written sale and purchase agreement appeared to have been made between them and the vendors of the said land at that time; but presumably some definite arrangement had been made whereby they were committed to buy the said land.

About three months later, by an Indenture dated May 25, 1955 ("the Principal Indenture"), the freehold and leasehold estates in the said land were conveyed and assigned to them as tenants in common in undivided equal shares. The purchase price was $17, 547.50 which was paid by the four of them ("the original purchasers") in equal proportions. Apart from the Agreement, no deed of partition of their tenancy in common was made at the time of the Principal Indenture or subsequently. After completion of their purchase, each of them took possession and went into occupation of the respective plot of land as provided in the Agreement. Fences along the boundary lines of the sub-divided plots were put up. Each built his own house, and carried on farming activities within his own plot and enjoyed the rents or profits therefrom.

Since completion of the purchase of the said land, three of the original purchasers, Ng Ah Meng, Ng Chua and Neo Heer Bok, had transferred their respective undivided shares in the said land to divers parties as follows:

(1) By an Indenture dated January 27, 1966, Ng Ah Meng conveyed and assigned all his undivided ¼ share in the said Land to Ng Hoon Seng, Ng Ah Song and Ng Ah Ku, who are the 2nd, 3rd and 4th plaintiffs;

(2) By an Indenture dated December 6, 1963, Neo Heer Bok conveyed and assigned ½ of his undivided ¼ share in the said Land to Leong Ah Toon, the 1st defendant;

(3) By an Indenture dated October 10, 1966, Ng Chua conveyed and assigned all his undivided ¼ share in the said Land to Ng Chai Kiang, Ng Sam Chuan, Ng Teck Long, Ng Chye Kwan and Ng Chai Yoo, the 2nd, 3rd, 4th, 5th and 6th defendants;

(4) By an Indenture dated June 30, 1969, Neo Heer Bok conveyed and assigned the remaining ½ of his undivided ¼ share in the said land to Neo Koon Choon and Neo Sew Kit, the 7th and 8th defendants.

Further, Leong Ah Toon by an Indenture dated January 21, 1974 conveyed and assigned ¼ of his undivided 1/8 share in the said land to Leong Yik Boon, the 9th defendant. Hence, as at January 21, 1974, being the date of the last transaction, the freehold and leasehold estates in the said land were vested in the various parties as tenants in common in different undivided shares as follows:

(i) An undivided ¼ share in the 1st plaintiff;

(ii) An undivided ¼ share in the 2nd, 3rd and 4th plaintiffs;

(iii) An undivided 3/32 share in the 1st defendant;

(iv) An undivided ¼ share in the 2nd, 3rd, 4th, 5th and 6th defendants;

(v) An undivided 1/8 share in the 7th and 8th defendants;

(vi) An undivided 1/32 share in the 9th defendant.

No agreement whatsoever was made between these parties providing for their occupation and enjoyment of any of the subdivided plots of the said land; nor was the Agreement adopted by any of the parties who were not parties thereto. However, the 1st plaintiff remained in possession and occupation of the plot 1 as allocated to him and the other parties took possession and went into occupation of the respective plots allocated to their predecessors in title. Of the original purchasers, three of them, Ng Chua, Ng Ah Meng and Neo Heer Bok had passed away, and the only one surviving is Chiam Ah Khiam, the 1st plaintiff, and he had not conveyed and assigned any part of his undivided ¼ share in the said land to any person.

The Agricultural Lease No. 818 expired on December 1, 1977 and the Leasehold Land reverted to the State. Thereafter, the 1st plaintiff continued to occupy plot 1 and the 2nd, 3rd and 4th plaintiffs plot 2 and the Government issued to them temporary occupation licences in respect of the land occupied by them and these licences were renewed annually; and the fees for the licences were paid by them. Nothing eventful occurred until January 3, 1984, when a declaration was made under section 5 of the Land Acquisition Act for the acquisition of the freehold land and notice thereof was given to each of the parties, namely: the plaintiffs and the first 9 defendants ("the 9 Defendants"). Pursuant to the Land Acquisition Act, the Collector of Land Revenue held an inquiry, and on October 8, 1984 made an award of $872,700 as compensation for the acquisition of the freehold land and apportioned this sum amongst the nine defendants to the exclusion of the plaintiffs. Thereupon, the plaintiffs took out this originating summons against the defendants, including the Collector of Land Revenue, claiming:

(i) that the 1st plaintiff was at the material time entitled as a tenant in common to an undivided ¼ share in the freehold land;

(ii) that the 2nd, 3rd and 4th plaintiffs were at the material time entitled to an undivided ¼ share in the freehold land;

(iii) that the award of the Collector of Land Revenue be corrected accordingly and that the Collector of Land Revenue be directed to apportion the award in proportion to the respective parties' interests in the freehold land.

Plainly under the Principal Indenture the freehold and leasehold estates of the said land were conveyed and assigned to the four original purchasers as tenants in common in undivided equal shares, and the 2nd, 3rd and 4th plaintiffs and the nine defendants acquired by various indentures listed above undivided shares in the said land. The plaintiffs therefore claim that at all material times they held the said land and in particular the freehold land as tenants in common with the 9 defend-

ants and consequently were entitled to share in the award made by the 10th defendant, the Collector of Land Revenue. The nine defendants contend, however, that the tenancy in common in which the original purchasers held the said land had been determined by a partition made between them and that they, the nine defendants, as successors in title to two of the original purchasers took plots 3 and 4 of the said land, being the freehold land, in severalty. In support they rely on the Agreement. The main issue before me is whether the tenancy in common had been determined by any partition made between the four original purchasers or subsequently.

The case of the plaintiffs depends considerably on the evidence of 1st plaintiff, the only survivor of the four original purchasers. According to him, in 1955, he and the other three original purchasers negotiated with the then owners for the purchase of the said land. They consulted their solicitor and were advised that a part of the said land had a leasehold tenure and was comprised in a lease which had a remaining term of only 22 years unexpired and the other part was comprised in a grant for a term forever. The owners insisted on selling both parts of the said land and reduced the sale price on condition that both parts were included in the sale. The four of them agreed. Hence, at that time, all four of them were fully aware that a part of the said land was comprised in a lease for 99 years and that the lease had a term of only 22 years unexpired and that the other part of the said land was comprised in a grant for an estate forever. They then engaged A. Kandiah to carry out a survey and subdivide the said land. He said that there were discussions at that time to the effect that both the leasehold land and the freehold land should be subdivided into four subdivided plots. However, since each of them intended to use the said land for farming, they found it inconvenient to subdivide the leasehold land and the freehold land in that manner, and it was then agreed that the leasehold land and the freehold land be divided each into two subdivided plots. It was also agreed, he said, that they would, after completion of the purchase, apply for conversion of the tenure of the leasehold land into one in perpetuity and for subdivision of the said land into the four plots as agreed so that each plot would then have a title with the same tenure. The said land was then surveyed by A. Kandiah and subdivided into the four plots as agreed: plots 1, 2, 3 and 4. As plot 2 was inferior to the other plots it was agreed that the party who was allocated that plot would be compensated by the other parties in the following sums: $400 by the party who was allocated plot 1, $300 by the party who was allocated plot 3 and $200 by the party who was allocated plot 4. They then drew lots for determining the allocation to themselves of the subdivided plots. As a result of the drawing of lots, plot 1 was allocated to him, plot 2 to Ng Ah Meng, plot 3 to Neo Heer Bok and plot 4 to Ng Chua. Thereafter the Agreement was drawn up by their solicitor and was duly signed by all four of them. The purchase was completed about three months later. He said that after the purchase, they did not apply to the appropriate authorities for conversion of the tenure of the leasehold land and for subdivision of the said land, as there were financial constraints. Hence, no applications were made and nothing was done to implement what they originally agreed. In fact, he said that they had a meeting at which they agreed to abandon their agreement to partition or subdivide the said land; however, the physical boundaries of the said land as demarcated were to remain for the purpose of their respective farming activities so that each would occupy and carry out farming on the plot of land within the boundary without interference from the others but each was to retain an undivided ¼ share in the said land.

The 1st defendant, however, claimed that he was present at the time when the four original purchasers drew lots to determine who should get which plot of the said land and he said that the parties agreed that whichever plot was allocated to that person pursuant to the drawing of lots, that person would be the absolute owner of that plot to the exclusion of the others. It was also agreed, according to him, that whoever were allocated the 2 plots of freehold land would jointly compensate the other two who were allocated the two plots of leasehold land a sum of $700. Accordingly, after the lots were drawn, the parties, Ng Chua and Neo Heer Bok paid to Chiam Ah Khiam and Ng Ah Meng the sum of $700. He maintained that he was present at the time when the four original purchasers agreed on the proposal, as he had a financial interest in the transaction, and his financial interest consisted of a loan of $2,200 granted by him to Neo Heer Bok to enable the latter to pay for his share of the purchase price. In support of his allegation of the loan of $2,200, the 1st defendant relied on an acknowledgement dated January 31, 1958, which strangely enough was not signed by either Neo Heer Bok or the 1st defendant, but by two witnesses. The 1st plaintiff denied that the 1st defendant was present when he and the other three original purchasers drew lots and came to an agreement as regards division and holding of the sub-

divided plots of the said land; he denied the allegations of the 1st defendant.

I do not accept 1st defendant's evidence. In particular I do not accept that he was present when the four original purchasers negotiated among themselves, when they drew lots and subsequently when they signed the Agreement. I think it is true that he did make a loan of $2,200 to Neo Heer Bok, but I do not believe that the loan was made at the time – in May 1955 – to enable Neo Heer Bok to pay for his share of the purchase price; I think the loan was made much later, probably in 1958. Subsequently, in satisfaction of this loan, Neo Heer Bok by the Indenture dated December 6, 1963 conveyed and assigned ½ of his undivided ¼ share in the said land to the 1st defendant.

On an analysis of the evidence I find it highly unlikely that the Agreement, which was made about three months before the original purchasers completed their purchase of the said land, contained the entire arrangement between them as regards the sub-division of the said land, holding of the subdivided plots and severance of their interests as tenants in common of the said land. As a starting point, there are certain facts which are clear and undisputed. First, at the time of the negotiation of the purchase of the said land the four original purchasers were aware that a part of the said land – nearly one half of it – had a leasehold tenure with only a term of 22 years unexpired and the other part had a tenure in perpetuity. Secondly, the said land was subdivided into four plots by dividing the freehold land and leasehold land, each into two plots. This manner of subdivision was obviously dictated by the shapes of the two parts of the said land, and apart from the problem of different tenures it was to them a sensible and practical way of subdividing the said land. Thirdly, each of the original purchasers paid an equal amount – approximately $4,386.87 – towards the purchase price of the said land. It is inconceivable that the 1st plaintiff and Ng Ah Meng, who each paid an equal proportion of the purchase price for the said land as Neo Heer Bok and Ng Chua would be content to accept the 2 plots of leasehold land with a paltry compensation of $700 and gave up entirely their interests in the freehold land, as claimed by the 1st defendant. It is equally inconceivable that the original purchasers at that time in making an investment each in the sum of $4,386.87 – which was no insignificant amount in 1955 – in the acquisition of a piece of land for farming would allow a form of lottery to determine definitively which two of them would acquire the leasehold land with a remaining term of only 22 years to run and which two the freehold land. I do not believe that they would leave such a matter to chance. It may be that the original purchasers were all simple-minded farmers, but simple-minded farmers or not they must have appreciated as any reasonable purchaser would the simple and wide difference in tenure between the leasehold land and the freehold land at that time. The foremost consideration to any purchasers of land is the tenure of the land itself and they are usually very circumspect with regard to purchase of leasehold land – particularly in a case such as this where the tenure has a term of only 22 years to run. There is no reason why the 1st plaintiff and Ng Ah Meng should compromise and accept plots 1 and 2 respectively, and give up their interest absolutely and unconditionally in plots 3 and 4 in the circumstances as alleged by the 1st defendant. It seems to me that the original purchasers must have accepted the subdivided plots on the basis that each of the plots allotted to each of them would eventually have the same tenure and failing that, each of them would then retain an undivided ¼ share in the said land, though for purpose of convenient enjoyment and exploitation of the said land each took and occupied the plot allotted to him. I accept the 1st plaintiff's evidence that when the original purchasers purchased the said land they agreed to apply to the appropriate authorities for conversion of the tenure of the leasehold land into one in perpetuity and thereafter for approval for subdivision of the said land as demarcated by their surveyor. I also accept his evidence that after purchase of the said land, owing to certain constraints -- mainly financial – they did not proceed to implement their proposal, and subsequently agreed to continue the occupation of the subdivided plots as originally agreed and each to retain an undivided ¼ share in the whole of the said land. It is not too difficult to believe that such a situation as told by the 1st plaintiff had developed. After the purchase was completed each of them went into possession and occupation of the plot allotted to him and was busily engaged in developing his little farm. With financial constraints they had, they must have found it very burdensome to get together and engage surveyors and solicitors to proceed with the application for conversion of the tenure of the leasehold land and subdivision of the said land as agreed. In the absence of any dispute between the four of them and with the passage of time, the need to regularise their holding and ownership of their respective plots of land gradually receded. In that state of complacency the seriousness of the problem confronting them when they purchased the said land vanished and they

barely realised that their enjoyment and occupation of the respective plots of the said land were inconsistent with their ownership of the said land and that a controversy, such as the present one, would bound to surface in the future, particularly with the acquisition of interests in the said land by their successors in title.

The said land was acquired by the original purchasers as tenants in common in undivided equal shares and on the basis of the evidence of the 1st plaintiff the tenancy in common had not been determined by any partition made between them. Nor had such determination taken place at any time subsequently when the 2nd, 3rd and 4th plaintiffs and the nine defendants acquired undivided shares in the said land. It is significant that the 2nd, 3rd and 4th plaintiffs and the nine defendants by the various indentures listed above acquired undivided shares in the said land. Each indenture conveyed and assigned only an undivided share in the said land to the person or persons concerned, and none of the indentures made any reference to the Agreement in any way. The 1st defendant himself by an indenture dated January 21, 1974 acknowledged his undivided share in the said land and conveyed and assigned ¼ of his undivided share to the 9th defendant. It seems to me that the parties had by these indentures accepted their holdings of the said land as tenants in common in undivided shares.

Mr. Tan on behalf of the nine defendants raised the defence that the plaintiffs are estopped from denying that tenancy in common had been determined and that the said land had been partitioned into four plots as provided in the Agreement. It is not clear to me precisely on what facts he founded his defence of estoppel. The nine defendants have not shown in any way that they had acted on or relied upon the Agreement or on any representations made by the 1st plaintiff or by the 2nd, 3rd or 4th plaintiffs or their predecessors in title. It is true that the original purchasers fenced up and occupied the respective plots of the said land for which they drew lots. But the nine defendants knew what interest in the said land they had acquired. All the indentures conveyed and assigned to them undivided shares in the said land. None of them had shown that their acquisitions were made on the basis of or in reliance on representations by the plaintiffs or any of them that what they acquired was plot 3 or 4 or any specific part thereof in severalty.

Mr. Tan also relied on the fact that after the leasehold land had reverted to the State, the plaintiffs refused to pay any share of the property tax then payable on the remainder of the said land – the freehold land – and had therefore accepted that they had no interest therein. This position as presented is not quite accurate. Until the leasehold land reverted to the State all the parties in occupation of the said land paid their shares of property tax. When the leasehold land reverted to the State, temporary occupation licences were issued to the plaintiffs and in respect thereof fees were payable. The defendants refused to pay any part of the temporary occupation licence fees and in return the plaintiffs refused to make any contribution towards payment of the property tax payable on the freehold land.

In conclusion, I find that at all material times the plaintiffs and the nine defendants held the said land as tenants in common in undivided shares and that the tenancy in common had not been determined, and that at the time of acquisition of the freehold land under the Land Acquisition Act the plaintiffs had undivided shares therein. Accordingly, I make a declaration that the plaintiffs and the nine defendants were at the date the award was made by the 10th defendant owners of all that part of Lot 125-2 of Mukim XIII comprised in the Statutory Land Grant No. 11455 as tenants in common in the undivided shares as set against their respective names hereunder:

Name	Undivided Share
1. Chiam Ah Khiam ...	1/4
2. Ng Hoon Seng) 3. Ng Ah Song) 4. Ng Ah Ku) ...	1/4
5. Leong Ah Toon ...	3/32
6. Ng Chai Kiang) 7. Ng Sam Chuan) 8. Ng Teck Long) 9. Ng Chye Kwan) 10. Ng Chai Yoo) ...	1/4
11. Neo Koon Choon) 12. Neo Sew Kit) ...	1/8
13. Leong Yik Boon ...	1/32

In consequence of this declaration it was agreed by all the parties before me that I should make an order directing the 10th defendant, Collector of Land Revenue, to amend his award and apportion the same in the shares as described above and I so order. As for costs, the plaintiffs in

the application asked for costs of this application as between solicitors and clients to be taxed and paid out of the amount awarded; this was not opposed to by the defendants. I think, however, in the circumstances, a fair order is that each party, including the 10th defendant, should bear his own costs of these proceedings and I so order.

Order accordingly.

Solicitors: *Y.M. Ho & Chia; Tan, Lee & Choo.*

DOVER TRANSPORT AND TRADING CO. & ANOR. v. SINGAPORE BUS SERVICE (1978) LTD.

[A.C.J. (Chan Sek Keong J.C.) August 8, 1986]

[Singapore – Magistrate Court Appeal No. 5 of 1986]

Tort – Negligence – Road accident – Conflict of evidence – Quality and credibility of witnesses.

Road Traffic – Negligence – Collision of lorry with SBS bus.

In this case, the second defendant, the servant of the first defendant, drove his lorry in such a way as to hit the rear view mirror of the bus driven by the plaintiff's driver. The accident happened along the 10 m.s. Woodlands road whilst both vehicles were travelling in the same direction towards Upper Bukit Timah road. The Magistrate found the defendants negligent and gave judgment for the plaintiff. The defendants appealed.

Held, dismissing the appeal: the decision of the Magistrate was based substantially on his assessment of the quality and credibility of witnesses. In order to reverse, the court must not merely entertain doubts whether his decision is right but be convinced that it is wrong. In this case, the court is not convinced that the Magistrate is wrong.

Case referred to:

(1) *Whitehouse* v. *Jordan* [1981] 1 All E.R. 267, 276.

MAGISTRATE'S APPEAL.

Arul Anandan for the appellants.

John Ng for the respondents.

Cur. Adv. Vult.

Chan Sek Keong J.C.: This appeal is against the decision of the Magistrate who found as a fact that the 2nd defendant, the servant of the 1st defendant, drove his motor lorry No. YC 1107 H which was carrying plywood in such a way as to hit the rear view mirror of the motor bus No. SBS 3355 H which was being driven by the plaintiff's driver. The accident happened along the 10 m.s. Woodlands Road whilst both vehicles were travelling in the same direction towards Upper Bukit Timah Road. Where the accident occurred, the road had two lanes for vehicular traffic and road works were being carried out on the road divider separating the dual carriageway at that stretch where the accident occurred. The bus was travelling on the left lane with about 3 feet clearance to the kerb and its rear view mirror was sticking out by about a foot across the white line separating the two lanes. The plaintiff's driver said that 2nd defendant suddenly overtook him but in doing so the plywood on the lorry hit against the rear view of the bus. He took evasive action by swerving the bus to the left and in so doing collided into the left kerb.

PW1, the bus driver, made two reports on the same day, one to the plaintiff and the other to the police. In both reports he stated that the lorry hit or grazed the rear view mirror.

PW2, the foreman who inspected the bus at 8 a.m. on the day after the accident, said in his evidence in chief that the rear view mirror was broken but that he overlooked repairing it. In cross-examination, he however admitted that he did not have the mirror replaced because it appeared to have been replaced when he came to examine the damage to the bus; it looked new to him. He explained that it was usual to replace mirrors because the bus needed to be shifted around. He also said that any mechanic or panel beater could have replaced it if he had found it inconvenient to drive the bus around without a mirror and that there was no need to requisition for a mirror from stores because most panel beaters kept one or two spares in the locker.

The Magistrate accepted the evidence of PW1 and PW2 in preference to the evidence of the defendant's driver.

In his grounds of decision, the Magistrate gave the following grounds for finding the defendant negligent:

(a) the defence rested on a bare denial which did not help in any way to substantiate a more probable case.

(b) it was highly improbable that the motor lorry could overtake the bus without grazing the right view mirror of the bus.